

c. Timelines

When the State does not have all elements of the Quality Improvement Strategy in place, provide timelines to design methods for discovery and remediation related to the assurance of Financial Accountability that are currently non-operational.

☐ No

☒ Yes

Please provide a detailed strategy for assuring Administrative Authority, the specific timeline for implementing identified strategies, and the parties responsible for its operation.

Upon CMS approval of the children's autism waiver, DDP will implement a QA Review Section specific to and inclusive of the Appendix D performance measures. Hard copies of Excel spreadsheets will generate percent compliance data based on the performance measures. Annual DDP QA reviews of providers will also include narratives serving to summarize the numerical data contained in the excel worksheets. The QA narratives for all reviewed providers are posted on the DDP website, to enable potential service recipients and their families to make informed decisions and choices when selecting providers for waiver-funded services. Hard copies of the QA review reports, including hard copies of the worksheets, are maintained in the DDP central office.

The aggregation of statewide data based on the submittal of the worksheets to the DDP central office will begin with the DDP QIS submittal of the first QA Review. This will take place within one year of the day of the first child being enrolled in the waiver.

Appendix E: Participant Direction of Services

Applicability (from Application Section 3, Components of the Waiver Request):

☒ **Yes. This waiver provides participant direction opportunities.** Complete the remainder of the Appendix.

☐ **No. This waiver does not provide participant direction opportunities.** Do not complete the remainder of the Appendix.

CMS urges states to afford all waiver participants the opportunity to direct their services. Participant direction of services includes the participant exercising decision-making authority over workers who provide services, a participant-managed budget or both. CMS will confer the Independence Plus designation when the waiver evidences a strong commitment to participant direction.

Indicate whether Independence Plus designation is requested (select one):

☒ **Yes. The State requests that this waiver be considered for Independence Plus designation.**

☐ **No. Independence Plus designation is not requested.**

Appendix E: Participant Direction of Services

E-1: Overview (1 of 13)

Answers provided in Appendix E-0 indicate that you do not need to submit Appendix E.

Appendix E: Participant Direction of Services

E-1: Overview (2 of 13)

Answers provided in Appendix E-0 indicate that you do not need to submit Appendix E.

Appendix E: Participant Direction of Services

E-1: Overview (3 of 13)

Answers provided in Appendix E-0 indicate that you do not need to submit Appendix E.

Appendix E: Participant Direction of Services

E-1: Overview (4 of 13)

Answers provided in Appendix E-0 indicate that you do not need to submit Appendix E.

Appendix E: Participant Direction of Services

E-1: Overview (5 of 13)

Answers provided in Appendix E-0 indicate that you do not need to submit Appendix E.

Appendix E: Participant Direction of Services

E-1: Overview (6 of 13)

Answers provided in Appendix E-0 indicate that you do not need to submit Appendix E.

Appendix E: Participant Direction of Services

E-1: Overview (7 of 13)

Answers provided in Appendix E-0 indicate that you do not need to submit Appendix E.

Appendix E: Participant Direction of Services

E-1: Overview (8 of 13)

Answers provided in Appendix E-0 indicate that you do not need to submit Appendix E.

Appendix E: Participant Direction of Services

E-1: Overview (9 of 13)

Answers provided in Appendix E-0 indicate that you do not need to submit Appendix E.

Appendix E: Participant Direction of Services

E-1: Overview (10 of 13)

Answers provided in Appendix E-0 indicate that you do not need to submit Appendix E.

Appendix E: Participant Direction of Services

E-1: Overview (11 of 13)

Answers provided in Appendix E-0 indicate that you do not need to submit Appendix E.

Appendix E: Participant Direction of Services

E-1: Overview (12 of 13)

Answers provided in Appendix E-0 indicate that you do not need to submit Appendix E.

Appendix E: Participant Direction of Services

E-1: Overview (13 of 13)

Answers provided in Appendix E-0 indicate that you do not need to submit Appendix E.

Appendix E: Participant Direction of Services

E-2: Opportunities for Participant Direction (1 of 6)

Answers provided in Appendix E-0 indicate that you do not need to submit Appendix E.

Appendix E: Participant Direction of Services

E-2: Opportunities for Participant-Direction (2 of 6)

Answers provided in Appendix E-0 indicate that you do not need to submit Appendix E.

Appendix E: Participant Direction of Services

E-2: Opportunities for Participant-Direction (3 of 6)

Answers provided in Appendix E-0 indicate that you do not need to submit Appendix E.

Appendix E: Participant Direction of Services

E-2: Opportunities for Participant-Direction (4 of 6)

Answers provided in Appendix E-0 indicate that you do not need to submit Appendix E.

Appendix E: Participant Direction of Services

E-2: Opportunities for Participant-Direction (5 of 6)

Answers provided in Appendix E-0 indicate that you do not need to submit Appendix E.

Appendix E: Participant Direction of Services

E-2: Opportunities for Participant-Direction (6 of 6)

Answers provided in Appendix E-0 indicate that you do not need to submit Appendix E.

Appendix F: Participant Rights

Appendix F-1: Opportunity to Request a Fair Hearing

The State provides an opportunity to request a Fair Hearing under 42 CFR Part 431, Subpart E to individuals: (a) who are not given the choice of home and community-based services as an alternative to the institutional care specified in Item 1-F of the request; (b) are denied the service(s) of their choice or the provider(s) of their choice; or, (c) whose services are denied, suspended, reduced or terminated. The State provides notice of action as required in 42 CFR §431.210.

Procedures for Offering Opportunity to Request a Fair Hearing. Describe how the individual (or his/her legal representative) is informed of the opportunity to request a fair hearing under 42 CFR Part 431, Subpart E. Specify the notice (s) that are used to offer individuals the opportunity to request a Fair Hearing. State laws, regulations, policies and notices referenced in the description are available to CMS upon request through the operating or Medicaid agency.

The W-5 Freedom of Choice and Consent form is completed annually for all recipients in the waiver. This form requires the Family Support Specialist, or the Quality Improvement Specialist to explain the right to fair hearing in the event the recipient or family is denied the provider or service of choice. In addition to the W-5 form, the Explanation of ICF/MR Services and Fair Hearing Rights form provides more detail regarding the fair hearing process and the process used by the Department to commit persons to the State ICF-MR. This form is also used to ensure consistency in the sharing of this information with recipients and others. ARM 37.34.918 outlines the choice of services and choice of provider protections afforded to waiver recipients. ARM 37.34.919 outlines the Fair Hearing process used by the Department. Not all Department decisions can be appealed, as outlined in 37.34.902. Legal clarification of 37.34.902 follows:

37.5.131 DEPARTMENT HEARING PROCEDURES, SCOPE, AND SUBORDINATION TO CERTAIN OTHER LAW

- (1) There is no right to a hearing in any matter except as specifically provided by law, including department rule.
- (2) There is no right to a hearing in a contract dispute between the department and any other person or entity except as specifically provided by the terms of the contract or as specifically provided by state law.
- (3) The rules in this chapter are subject to the provisions of any applicable federal statute or regulation, whether now in existence or hereafter adopted.
- (4) The rules in this chapter are subject to any other provision of Montana statute or department rule applicable to the particular program or matter at issue.

Interpretation of 37.5.131- This language is for the purpose of recognizing that mandatory federal provisions for federally authorized programs are to be implemented and will govern over contrary language in the Department's general rule set. This preemption is inclusive of program specific fair hearing rules that are expressly cross-referenced in the general fair hearing rules such as the ARM 37.34.919 referenced in the context of ARM 37.5.115. ARM 37.5.115 references hearing rights for Developmental Disabilities Programs as follows:

- (1) Hearings relating to the Developmental Disability Services program are available as follows:
- (d) hearings contesting adverse department determinations regarding services under the Medicaid Home and Community Services program for persons with developmental disabilities are available to the extent provided and according to the procedures specified in ARM 37.5.304, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337, subject to the provisions of ARM 37.34.919;

37.34.918 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: INFORMING BENEFICIARY OF CHOICE (1) A person determined by the department to require the level of care provided in an ICF/MR must be given a choice between placement in an ICF/MR or in the medicaid home and community services program.

(2) The person or legal representative must be informed of the feasible alternatives in the community, if any, available under the medicaid home and community services program. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; TRANS, from SRS, 1998 MAR p. 3124.)

37.34.919 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: NOTICE AND FAIR HEARING (1) The department will provide written notice to applicants for and recipients of medicaid home and community services when determinations are made by the department concerning their status pertaining to level of care and selection or denial for placement.

- (a) The department will provide a recipient with notice 10 working days before termination of services due to a determination of ineligibility.
- (2) The department will provide a recipient at least 30 calendar days notice before any termination or reduction of services due to limitations upon services or insufficient program funds, as provided in ARM 37.34.902(4).
- (3) A person aggrieved by an adverse department determination for a level of care determination finding the person ineligible for services may request a fair hearing as provided in 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337.
- (4) A person may request a review and a fair hearing as provided in ARM 37.34.335 for a non-selection or denial of a

service made by the department. A person may not appeal a termination or reduction in services undertaken by the department in accordance with ARM 37.34.902(4). (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; AMD, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124; AMD, 2000 MAR p. 1653, Eff. 6/30/00.)

37.34.902 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: GENERALLY (1) The medicaid home and community services program for persons who are developmentally disabled serves persons:

- (a) who would otherwise require the level of care provided in an intermediate care facility for the mentally retarded (ICF/MR); and
 - (b) for whom services provided through the medicaid home and community services program will not jeopardize the person's health and safety.
- (2) Eligibility of applicants for the medicaid home and community services program is determined as provided in ARM 37.34.906.
- (3) Placement into medicaid home and community services is determined as provided in ARM 37.34.301, et seq.
- (4) Services and placements in services through the medicaid home and community services program are available only to the extent that the federal approval of the state's program permits and that available funding allows.
- (5) The department, in order to comply with federal requirements or to limit expenditures to available funding, may:
- (a) reduce the number of medicaid recipients that may be served under the program;
 - (b) postpone or waive implementation of a particular service of the program; or
 - (c) eliminate one or more of the services of the program. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; AMD, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

Payment for services during an appeal:

ARM 37.34.919(4), above, does not provide for termination or reduction of services to individuals. This rule is applicable only to groups or classes of recipients should across the board reduction or terminations of specific services occur due to budget constraints or legislative actions or should expiration, termination or reduction of a waiver occur.

ARM 37.34.919 (3) provides for fairing hearings due to adverse determinations for individual recipients and allows for continuation of services during the appeal process. In specific it references ARM 37.5.316 which provides that:

- (3) If a claimant requests a hearing within the period between the date of the notice and the date of the adverse action and the claimant is receiving benefits at that time, at the request of the claimant benefits shall be continued until the earlier of the expiration of the current eligibility or authorization period or issuance of a hearing decision except as provided in (7) and (8) of this rule.

ARM 37.34.316 (13) outlines the individual's responsibility to pay for services received during the appeal process:

- (13) Benefits paid to a claimant pending a hearing decision are subject to recovery by the department if the adverse action is sustained.

The disposition of services pending the resolution of the appeal process and/or fair hearing process follows:

Pre-existing services remain ongoing during the appeal and fair hearing process. Denial of eligibility is subject to the protections of the Administrative Rules of Montana as outlined in 37.34.919, above. Any denial of a requested service based on the plan of care process is subject to DDP administrative review and/or Department fair hearing, as outlined in ARM 37.34.1114, preceding. All dispute resolution issues coming to the DDP for initial review are assigned to the DDP field services bureau chief for action and tracking purposes. Records of Department fair hearings, DDP administrative reviews and outcomes are maintained by the DDP community services bureau chief.

Appendix F: Participant-Rights

Appendix F-2: Additional Dispute Resolution Process

- a. **Availability of Additional Dispute Resolution Process.** Indicate whether the State operates another dispute resolution process that offers participants the opportunity to appeal decisions that adversely affect their services while preserving their right to a Fair Hearing. *Select one:*